

AMENDED IN ASSEMBLY JULY 7, 1998
AMENDED IN ASSEMBLY JUNE 8, 1998
AMENDED IN SENATE JANUARY 5, 1998

SENATE BILL

No. 237

Introduced by Senator Johnson

February 3, 1997

An act to amend ~~Sections 1760.5 and 1765.1~~ of *Section 1765.1* of, and to add Sections 1760.6, and 1760.7 to the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 237, as amended, Johnson. Insurance: surplus lines.

Existing law provides that certain provisions limiting the insurance that may be placed with nonadmitted insurers and requiring the report of that placement do not apply to certain types of insurance, including spacecraft insurance.

This bill would define "spacecraft" for these purposes.

Existing law authorizes the Insurance Commissioner to request certain information and to issue certain orders with respect to surplus lines brokers.

This bill would authorize the commissioner to direct special lines' surplus line brokers to not place further business with an insurer whose eligibility has been withdrawn.

Existing law provides that the placement of special lines' insurance by a surplus line broker is not subject to a requirement that the insurer establish its financial stability with the Insurance Commissioner and meet related requirements.

This bill would make certain technical conforming changes to these provisions.

This bill would incorporate additional changes in Section 1765.1 of the Insurance Code proposed by AB 1975, to be operative if AB 1975 and this bill are both enacted and become effective on or before January 1, 1999, and this bill is enacted last.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1760.5 of the Insurance Code is~~
2 ~~amended to read:~~
3 ~~1760.5. (a) The provisions of this chapter limiting the~~
4 ~~insurance that may be placed with nonadmitted insurers~~
5 ~~and requiring any report thereof shall not apply to any of~~
6 ~~the following:~~
7 ~~(1) Reinsurance of the liability of an admitted insurer.~~
8 ~~(2) Insurance against perils of navigation, transit or~~
9 ~~transportation upon hulls, freights or disbursements, or~~
10 ~~other shipowner interests; upon goods, wares,~~
11 ~~merchandise and all other personal property and~~
12 ~~interests therein, in course of exportation from or~~
13 ~~importation into any country, or transportation~~
14 ~~coastwise, including transportation by land or water from~~
15 ~~point of origin to final destination and including war risks;~~
16 ~~and marine builder's risks, drydocks and marine railways;~~
17 ~~including insurance of ship repairer's liability, and~~
18 ~~protection and indemnity insurance, but excluding~~
19 ~~insurance covering bridges or tunnels.~~
20 ~~(3) Aircraft or spacecraft insurance. For purposes of~~
21 ~~this section, "spacecraft" means missiles, satellites, staffed~~
22 ~~and unstaffed space vehicles, any objects intended for~~
23 ~~launch, or objects launched or assembled in outer space,~~
24 ~~including, but not limited to, the space shuttle and any~~
25 ~~transportation, communication, information, or other~~
26 ~~system intended to be employed in outer space, together~~
27 ~~with related equipment, devices, components, and parts.~~

1 ~~(4) Insurance on property or operations of railroads~~
2 ~~engaged in interstate commerce.~~

3 ~~(b) The insurance specified in paragraph (2), (3), or~~
4 ~~(4) of subdivision (a) may be placed with a nonadmitted~~
5 ~~insurer only by and through a special lines' surplus line~~
6 ~~broker. The license of a special lines' surplus line broker~~
7 ~~shall be applied for and procured and shall be subject to~~
8 ~~the same fees for filing on issuance in the same manner~~
9 ~~as the license of a surplus line broker, except that in lieu~~
10 ~~of the bond required by Section 1765, there shall be~~
11 ~~delivered to the commissioner a bond in the form,~~
12 ~~amounts, and conditions specified in Sections 1663 and~~
13 ~~1665 for an insurance broker and only one fee shall be~~
14 ~~collected from one person for both licenses. The licensee~~
15 ~~in respect to the business shall be subject to all the~~
16 ~~provisions of this chapter except Sections 1761, 1763,~~
17 ~~1765.1, and 1775.5.~~

18 ~~(c) The commissioner may address to any licensed~~
19 ~~special lines' surplus lines broker a written request for full~~
20 ~~and complete information respecting the financial~~
21 ~~stability, reputation, and integrity of any nonadmitted~~
22 ~~insurer with whom the licensee has dealt or proposes to~~
23 ~~deal in the transaction of insurance specified in~~
24 ~~paragraph (2), (3), or (4) of subdivision (a). The licensee~~
25 ~~so addressed shall promptly furnish in written or printed~~
26 ~~form so much of the information requested as he or she~~
27 ~~can produce together with a signed statement identifying~~
28 ~~the same and giving reasons for omissions, if any. After~~
29 ~~due examination of the information and accompanying~~
30 ~~statement, the commissioner may, if he or she believes it~~
31 ~~to be in the public interest, order in writing the licensee~~
32 ~~to place no further insurance business on property~~
33 ~~located or operations conducted within or on the lives of~~
34 ~~persons who are residents of this state with that~~
35 ~~nonadmitted insurer on behalf of any person. Any~~
36 ~~placement with that nonadmitted insurer made by a~~
37 ~~licensee after receipt of the order is a violation of this~~
38 ~~chapter. The commissioner may issue an order if he or she~~
39 ~~finds that a nonadmitted insurer with whom the licensee~~
40 ~~has dealt or proposes to deal in the transaction of~~

~~insurance is in an unsound financial condition, is
disreputable, or is lacking in integrity. The order shall also
include notice of a hearing to be held at a time and place
fixed therein, which shall be not less than 20 nor more
than 30 days from service of the order upon the licensee.
In addition, the commissioner has the discretion to direct
special lines' surplus line brokers to not place further
business with an insurer whose eligibility has been
withdrawn pursuant to Section 1765.1.~~

~~(d) The commissioner may, in respect to business
written or placed under the provisions of this section,
require information and reports thereof that the
commissioner considers necessary, convenient, or
advisable.~~

~~(e) Each placing of insurance in violation of this
chapter is a misdemeanor.~~

~~(f) The commissioner may revoke, suspend, or deny
any license granted pursuant to this code in accordance
with the procedure provided in Article 13 (commencing
with Section 1737) of Chapter 5, or any certificate of
authority granted pursuant to this code in accordance
with the procedure provided in Section 704 whenever the
commissioner finds that the licensee or holder of the
certificate has committed a violation of this section.~~

~~(g) The premium for insurance placed by or through
a special lines' surplus line broker pursuant to this section
shall not be subject to the tax imposed upon the broker
based upon gross premiums paid for insurance placed
under authority conferred by the license.~~

~~SEC. 2.—~~

~~SECTION 1. Section 1760.6 is added to the Insurance
Code, to read:~~

~~1760.6. For purposes of Section 1760.5, "spacecraft"
means missiles, satellites, staffed and unstaffed space
vehicles, any objects intended for launch, or objects
launched or assembled in outer space, including, but not
limited to, the space shuttle and any transportation,
communication, information, or other system intended to
be employed in outer space, together with related
equipment, devices, components, and parts.~~

1 SEC. 2. Section 1760.7 is added to the Insurance Code,
2 to read:

3 1760.7. In addition to the authority granted by Section
4 1760.5, the commissioner has the discretion to direct
5 special lines' surplus line brokers to not place further
6 business with an insurer whose eligibility has been
7 withdrawn pursuant to Section 1765.1.

8 SEC. 3. Section 1765.1 of the Insurance Code is
9 amended to read:

10 1765.1. No surplus line broker shall place any
11 coverage with a nonadmitted insurer unless the insurer
12 is domiciled in the Republic of Mexico and the placement
13 covers only liability arising out of the ownership,
14 maintenance, or use of a motor vehicle, aircraft, or boat
15 in the Republic of Mexico, or, at the time of placement,
16 the nonadmitted insurer:

17 (a) (1) Has established its financial stability,
18 reputation, and integrity, for the class of insurance the
19 broker proposes to place, by satisfactory evidence
20 submitted to the commissioner through a surplus line
21 broker.

22 (2) (A) Has capital and surplus that together total at
23 least fifteen million dollars (\$15,000,000). "Capital" shall
24 be as defined in Section 36. "Surplus" shall be defined as
25 assets exceeding the sum of liabilities for losses reported,
26 expenses, taxes, and all other indebtedness and
27 reinsurance of outstanding risks as provided by law and
28 paid-in capital in the case of an insurer issuing or having
29 outstanding shares of capital stock. The type of assets to
30 be used in calculating capital and surplus shall be as
31 follows: at least fifteen million dollars (\$15,000,000) shall
32 be in the form of cash, or securities of the same character
33 and quality as specified in Sections 1170 to 1182, inclusive,
34 or in readily marketable securities listed on regulated
35 United States' national or principal regional securities
36 exchanges. The remaining assets shall be in the form just
37 described, or in the form of investments of substantially
38 the same character and quality as described in Sections
39 1190 to 1202, inclusive. In calculating capital and surplus
40 under this section, the term "same character and quality"

1 shall permit, but not require, the commissioner to
2 approve assets maintained in accordance with the laws of
3 another state or country. The commissioner shall be
4 guided by any limitations, restrictions, or other
5 requirements of this code or the National Association of
6 Insurance Commissioners' Accounting Practices and
7 Procedures Manual in determining whether assets
8 substantially similar to those described in Sections 1190 to
9 1202, inclusive, qualify. The commissioner shall retain the
10 discretion to disapprove or disallow any asset that is not
11 of a sound quality, or that he or she deems to create an
12 unacceptable risk of loss to the insurer or to policyholders.
13 Securities specifically valued by the National Association
14 of Insurance Commissioners Securities Valuation Office
15 shall be presumed readily marketable absent evidence to
16 the contrary. Letters of credit will not qualify as assets in
17 the calculation of surplus. If less than fifteen million
18 dollars (\$15,000,000), the commissioner has affirmatively
19 found that the capital and surplus is adequate to protect
20 California policyholders. The commissioner shall
21 consider, on determining whether to make this finding,
22 factors such as quality of management, the capital and
23 surplus of any parent company, the underwriting profit
24 and investment income trends, and the record of claims
25 payment and claims handling practices of the
26 nonadmitted insurer, or

27 (B) In the case of an "Insurance Exchange" created
28 and authorized under the laws of individual states,
29 maintains capital and surplus of not less than fifty million
30 dollars (\$50,000,000) in the aggregate. "Capital" shall be
31 as defined in Section 36. "Surplus" shall be defined as
32 assets exceeding the sum of liabilities for losses reported,
33 expenses, taxes, and all other indebtedness and
34 reinsurance of outstanding risks as provided by law and
35 paid-in capital in the case of an insurer issuing or having
36 outstanding shares of capital stock. The type of assets to
37 be used in calculating capital and surplus shall be as
38 follows: at least fifteen million dollars (\$15,000,000) shall
39 be in the form of cash, or securities of the same character
40 and quality as specified in Sections 1170 to 1182, inclusive,

1 or in readily marketable securities listed on regulated
2 United States' national or principal regional securities
3 exchanges. The remaining assets shall be in the form just
4 described, or in the form of investments of substantially
5 the same character and quality as described in Sections
6 1190 to 1202, inclusive. In calculating capital and surplus
7 under this section, the term "same character and quality"
8 shall permit, but not require, the commissioner to
9 approve assets maintained in accordance with the laws of
10 another state or country. The commissioner shall be
11 guided by any limitations, restrictions, or other
12 requirements of this code or the National Association of
13 Insurance Commissioners' Accounting Practices and
14 Procedures Manual in determining whether assets
15 substantially similar to those described in Sections 1190 to
16 1202, inclusive, qualify. The commissioner shall retain the
17 discretion to disapprove or disallow any asset that is not
18 of a sound quality, or that he or she deems to create an
19 unacceptable risk of loss to the insurer or to policyholders.
20 Securities specifically valued by the National Association
21 of Insurance Commissioners Securities Valuation Office
22 shall be presumed readily marketable absent evidence to
23 the contrary. Letters of credit will not qualify as assets in
24 the calculation of surplus. In the case of an Insurance
25 Exchange that maintains funds for the protection of all
26 Insurance Exchange policyholders, each individual
27 syndicate seeking to accept surplus line placements of
28 risks resident, located or to be performed in this state shall
29 maintain minimum capital and surplus of not less than six
30 million four hundred thousand dollars (\$6,400,000). Each
31 individual syndicate shall increase the capital and surplus
32 required by this paragraph by one million dollars
33 (\$1,000,000) each year until it attains a capital and surplus
34 of fifteen million dollars (\$15,000,000). In the case of
35 Insurance Exchanges that do not maintain funds for the
36 protection of all Insurance Exchange policyholders, each
37 individual syndicate seeking to accept surplus line
38 placement of risks resident, located or to be performed in
39 this state shall meet the capital and surplus requirements
40 of subparagraph (A) of this paragraph.

1 (C) In the case of a syndicate that is part of a group
2 consisting of incorporated individual insurers, or a
3 combination of both incorporated and unincorporated
4 insurers, that at all times maintains a trust fund of not less
5 than one hundred million dollars (\$100,000,000) in a
6 qualified United States financial institution as security to
7 the full amount thereof for the United States surplus line
8 policyholders and beneficiaries of direct policies of the
9 group, including all policyholders and beneficiaries of
10 direct policies of the syndicate, and the full balance in the
11 trust fund is available to satisfy the liabilities of each
12 member of the group of those syndicates, incorporated
13 individual insurers or other unincorporated insurers,
14 without regard to their individual contributions to that
15 trust fund, and the trust complies with the terms of and
16 conditions specified in paragraph (1) of subdivision (b),
17 the syndicate is excepted from the capital and surplus
18 requirements of subparagraph (A) of paragraph (2). The
19 incorporated members of the group shall not be engaged
20 in any business other than underwriting as a member of
21 the group and shall be subject to the same level of
22 solvency regulation and control by the group's
23 domiciliary regulator as are the unincorporated
24 members.

25 (b) (1) In addition, to be eligible as a surplus line
26 insurer, an insurer not domiciled in one of the United
27 States or its territories shall have in force in the United
28 States an irrevocable trust account in a qualified United
29 States financial institution, for the protection of United
30 States policyholders, of not less than five million four
31 hundred thousand dollars (\$5,400,000) and consisting of
32 cash, securities acceptable to the commissioner that are
33 authorized pursuant to Sections 1170 to 1182, inclusive,
34 readily marketable securities acceptable to the
35 commissioner which are listed on a regulated United
36 States national or principal regional security exchange, or
37 clean and irrevocable letters of credit acceptable to the
38 commissioner and issued by a qualified United States
39 financial institution. The trust agreement shall be in a
40 form acceptable to the commissioner. The funds in the

1 trust account may be included in any calculation of
2 capital and surplus, except letters of credit, which shall
3 not be included in any calculation.

4 (2) In the case of a syndicate seeking eligibility under
5 subparagraph (C) of paragraph (2) of subdivision (a), the
6 syndicate shall, in addition to the requirements of that
7 subparagraph, at a minimum, maintain in the United
8 States a trust account in an amount satisfactory to the
9 commissioner that is not less than the amount required by
10 the domiciliary state of the syndicate's trust. The trust
11 account shall comply with the terms and conditions
12 specified in paragraph (1) of subdivision (b).

13 (3) In the case of a group of incorporated insurers
14 under common administration that maintains a trust fund
15 of not less than one hundred million dollars
16 (\$100,000,000) in a qualified United States financial
17 institution for the payment of claims of its United States
18 policyholders, their assigns, or successors in interest and
19 that complies with the terms and conditions of paragraph
20 (1) that has continuously transacted an insurance
21 business outside the United States for at least three years,
22 that is in good standing with its domiciliary regulator,
23 whose individual insurer members maintain standards
24 and financial condition reasonably comparable to
25 admitted insurers, that submits to this state's authority to
26 examine its books and bears the expense of examination,
27 and that has an aggregate policyholder surplus of ten
28 billion dollars (\$10,000,000,000), the group is excepted
29 from the capital and surplus requirements of subdivision
30 (a).

31 (c) Has caused to be provided to the commissioner the
32 following documents:

33 (1) The financial documents as specified below, each
34 showing the insurer's condition as of a date not more than
35 12 months prior to submission:

36 (A) A copy of an annual statement, prepared in the
37 form prescribed by the NAIC. For an alien insurer, in lieu
38 of an annual statement, a licensee may submit a form as
39 set forth by regulation and as prepared by the insurer,
40 and, if listed by the IID, a copy of the complete

1 information as required in the application for listing by
2 the IID.

3 (B) A copy of an audited financial report on the
4 insurer's condition that meets the standards of
5 subparagraph (D) for foreign insurers or subparagraph
6 (E) for alien insurers.

7 (C) If the insurer is an alien:

8 (i) A certified copy of the trust agreement referenced
9 in subdivision (b).

10 (ii) A verified copy of the most recent quarterly
11 statement or list of the assets in the trust.

12 (D) Financial reports filed pursuant to this section by
13 foreign insurers shall conform to the following standards:

14 (i) Financial documents shall be certified.

15 (ii) An audited financial report shall constitute a
16 supplement to the insurer's annual statement, as required
17 by the annual statement instructions issued by the NAIC.

18 (iii) An audited financial report shall be prepared by
19 an independent certified public accountant or
20 accounting firm in good standing with the American
21 Institute of Certified Public Accountants and in all states
22 where licensed to practice; and be prepared in
23 conformity with statutory accounting practices
24 prescribed, or otherwise permitted, by the insurance
25 regulator of the insurer's domiciliary jurisdiction.

26 (iv) An audited financial report shall include
27 information on the insurer's financial position as of the
28 end of the most recent calendar year, and the results of
29 its operations, cash-flows, and changes in capital and
30 surplus for the year then ended.

31 (v) An audited financial report shall be prepared in a
32 form and using language and groupings substantially the
33 same as the relevant sections of the insurer's annual
34 statement filed with its domiciliary jurisdiction, and
35 presenting comparatively the amounts as of December 31
36 of the most recent calendar year and the amounts as of
37 December 31 of the preceding year.

38 (E) Financial reports filed pursuant to this section by
39 alien insurers shall conform to the following standards:

1 (i) Except as provided in clause (ii) of subparagraph
2 (C), financial documents should be certified, if
3 certification of a financial document is not available, the
4 document shall be verified.

5 (ii) Financial documents should be expressed in
6 United States dollars, but may be expressed in another
7 currency, if the exchange rate for the other currency as
8 of the date of the document is also provided.

9 (iii) The responses provided pursuant to
10 subparagraph (A) of paragraph (1) on the form
11 submitted in lieu of an annual statement should follow the
12 most recent ISI Guide to Alien Reporting Format,
13 “Standard Definitions of Accounting Items.” Responses
14 that do not agree with a standard definition shall be fully
15 explained in the form.

16 (iv) An audited financial report shall be prepared by
17 an independent auditor licensed as such in the insurer’s
18 domiciliary jurisdiction or in any state.

19 (v) An audited financial report shall be prepared in
20 accord with either (I) Generally Accepted Auditing
21 Standards that prescribe Generally Accepted Accounting
22 Principles, or (II) International Accounting Standards as
23 published and revised from time to time by the
24 International Auditing Guidelines published by the
25 International Auditing Practice Committee of the
26 International Federation of Accountants; and shall
27 include financial statement notes and a summary of
28 significant accounting practices.

29 (F) The commissioner may accept, in lieu of a
30 document described above, any certified or verified
31 financial or regulatory document, statement, or report if
32 the commissioner finds that it possesses reliability and
33 financial detail substantially equal to or greater than the
34 document for which it is proposed to be a substitute.

35 (G) If one of the financial documents required to be
36 submitted under subparagraphs (A) and (B) is dated
37 within 12 months of submission, but the other document
38 is not so dated, the licensee may use the outdated
39 document if it is accompanied by a supplement. The
40 supplement must meet the same requirements which

1 apply to the supplemented document, and must update
2 the outdated document to a date within the prescribed
3 time period, preferably to the same date as the
4 nonsupplemented document.

5 (2) A certified copy of the insurer's license issued by
6 its domiciliary jurisdiction, plus a certification of good
7 standing, certificate of compliance, or other equivalent
8 certificate, from either that jurisdiction or, if the
9 jurisdiction does not issue those certificates, from any
10 state where it is licensed.

11 (3) Information on the insurer's agent in California for
12 service of process, including the agent's full name and
13 address. The agent's address must include a street address
14 where the agent can be reached during normal business
15 hours.

16 (4) The complete street address, mailing address, and
17 telephone number of the insurer's principal place of
18 business.

19 (5) A certified or verified explanation, report, or other
20 statement, from the insurance regulatory office or official
21 of the insurer's domiciliary jurisdiction, concerning the
22 insurer's record regarding market conduct and consumer
23 complaints; or, if that information cannot be obtained
24 from that jurisdiction, then other information that the
25 licensee can procure to demonstrate a good reputation
26 for payment of claims and treatment of policyholders.

27 (6) A verified statement, from the insurer or licensee,
28 on whether the insurer or any affiliated entity is currently
29 known to be the subject of any order or proceeding
30 regarding conservation, liquidation, or other
31 receivership; or regarding revocation or suspension of a
32 license to transact insurance in any jurisdiction; or
33 otherwise seeking to stop the insurer from transacting
34 insurance in any jurisdiction. The statement shall identify
35 the proceeding by date, jurisdiction, and relief or sanction
36 sought; and shall attach a copy of the order.

37 (7) A certified copy of the most recent report of
38 examination or an explanation if the report is not
39 available.



1 (d) (1) Has provided any additional information or
2 documentation required by the commissioner that is
3 relevant to the financial stability, reputation, and
4 integrity of the nonadmitted insurer. In making a
5 determination concerning financial stability, reputation,
6 and integrity of the nonadmitted insurer, the
7 commissioner shall consider any analysis, findings, or
8 conclusion made by the National Association of Insurance
9 Commissioners (NAIC) in its review of the insurer for
10 purposes of inclusion on or exclusion from the list of
11 authorized nonadmitted insurers maintained by the
12 NAIC. The commissioner may, but shall not be required
13 to, rely on, adopt, or otherwise accept any analyses,
14 findings, or conclusions of the NAIC, as the commissioner
15 deems appropriate. In the case of a syndicate seeking
16 eligibility under subparagraph (C) of paragraph (2) of
17 subdivision (a), the commissioner may, but shall not be
18 required to, rely on, adopt, or otherwise accept any
19 analyses, findings, or conclusions of any state, as the
20 commissioner deems appropriate, as long as that state, in
21 its method of regulation and review, meets the
22 requirements of paragraph (2).

23 (2) The regulatory body of the state shall regularly
24 receive and review the following: (A) an audited
25 financial statement of the syndicate, prepared by a
26 certified or chartered public accountant; (B) an opinion
27 of a qualified actuary with regard to the syndicate's
28 aggregate reserves for payment of losses or claims and
29 payment of expenses of adjustment or settlement of losses
30 or claims; (C) a certification from the qualified United
31 States financial institution that acts as the syndicate's
32 trustee, respecting the existence and value of the
33 syndicate's trust fund; and (D) information concerning
34 the syndicate's or its manager's operating history,
35 business plan, ownership and control, experience and
36 ability, together with any other pertinent factors, and any
37 information indicating that the syndicate or its manager
38 make reasonably prompt payment of claims in this state
39 or elsewhere. The regulatory body of the state shall have
40 the authority, either by law or through the operation of

1 a valid and enforceable agreement, to review the
2 syndicate's assets and liabilities and audit the syndicate's
3 trust account, and shall exercise that authority with a
4 frequency and in a manner satisfactory to the
5 commissioner.

6 (e) Has established that:

7 (1) All documents required by subdivisions (c) and
8 (d) have been filed. Each of the documents appear after
9 review to be complete, clear, comprehensible,
10 unambiguous, accurate, and consistent.

11 (2) The documents affirm that the insurer is not
12 subject in any jurisdiction to an order or proceeding that:

13 (A) Seeks to stop it from transacting insurance.

14 (B) Relates to conservation, liquidation, or other
15 receivership.

16 (C) Relates to revocation or suspension of its license.

17 (3) The documents affirm that the insurer has actively
18 transacted insurance for the three years immediately
19 preceding the filing made under this section, unless an
20 exemption is granted. As used in this paragraph, "insurer"
21 does not include a syndicate of underwriting entities. The
22 commissioner may grant an exemption if the licensee has
23 applied for exemption and demonstrates either of the
24 following:

25 (A) The insurer meets the condition for any exception
26 set forth in subdivision (a), (b), or (c) of Section 716.

27 (B) If the insurer has been actively transacting
28 insurance for at least 12 months, and the licensee
29 demonstrates that the exemption is warranted because
30 the insurer's current financial strength, operating history,
31 business plan, ownership and control, management
32 experience, and ability, together with any other
33 pertinent factors, make three years of active insurance
34 transaction unnecessary to establish sufficient reputation.

35 (4) The documents confirm that the insurer holds a
36 license to issue insurance policies (other than
37 reinsurance) to residents of the jurisdiction that granted
38 the license unless an exemption is granted. The
39 commissioner may grant an exemption if the licensee has
40 applied for an exemption and demonstrates that the

1 exemption is warranted because the insurer proposes to
2 issue in California only commercial coverage, and is
3 wholly owned and actually controlled by substantial and
4 knowledgeable business enterprises that are its
5 policyholders and that effectively govern the insurer's
6 destiny in furtherance of their own business objectives.

7 (5) The information filed pursuant to paragraph (5) of
8 subdivision (c) or otherwise filed with or available to the
9 commissioner, including reports received from
10 California policyholders, shall indicate that the insurer
11 makes reasonably prompt payment of claims in this state
12 or elsewhere.

13 (6) The information available to the commissioner
14 shall not indicate that the insurer offers in California a
15 licensee products or rates that violate any provision of this
16 code.

17 (f) Has been placed on the list of eligible surplus line
18 insurers by the commissioner. The commissioner shall
19 establish a list of all surplus line insurers that have met the
20 requirements of subdivisions (a) to (e), inclusive, and
21 shall publish a master list at least semiannually. Any
22 insurer receiving approval as an eligible surplus line
23 insurer shall be added by addendum to the list at the time
24 of approval, and shall be incorporated into the master list
25 at the next date of publication. If an insurer appears on
26 the most recent list, it shall be presumed that the insurer
27 is an eligible surplus line insurer, unless the commissioner
28 or his or her designee has mailed or causes to be mailed
29 notice to all surplus line brokers that the commissioner
30 has withdrawn the insurer's eligibility. Upon receipt of
31 notice, the surplus line broker shall make no further
32 placements with the insurer. Nothing in this subdivision
33 shall limit the commissioner's discretion to withdraw an
34 insurer's eligibility.

35 (g) (1) Except as provided by paragraph (2),
36 whenever the commissioner has reasonable cause to
37 believe, and determines after a public hearing, that any
38 insurer on the list established pursuant to subdivision (f),
39 (A) is in an unsound financial condition, (B) does not
40 meet the eligibility requirements under subdivisions (a)

1 to (e), inclusive, (C) has violated the laws of this state, or
2 (D) without justification, or with a frequency so as to
3 indicate a general business practice, delays the payment
4 of just claims, the commissioner may issue an order
5 removing the insurer from the list. Notice of hearing shall
6 be served upon the insurer or its agent for service of
7 process stating the time and place of the hearing and the
8 conduct, condition, or ground upon which the
9 commissioner would make his or her order. The hearing
10 shall occur not less than 20 days, nor more than 30 days
11 after notice is served upon the insurer or its agent for
12 service of process.

13 (2) If the commissioner determines that an insurer's
14 immediate removal from the list is necessary to protect
15 the public or an insured or prospective insured of the
16 insurer, or, in the case of an application by an insurer to
17 be placed on the list which is being denied by the
18 commissioner, the commissioner may issue an order
19 pursuant to paragraph (1) without prior notice and
20 hearing. At the time an order is served pursuant to this
21 paragraph to an insurer on the list, the commissioner shall
22 also issue and serve upon the insurer a statement of the
23 reasons that immediate removal is necessary. Any order
24 issued pursuant to this paragraph shall include a notice
25 stating the time and place of a hearing on the order,
26 which shall be not less than 20 days, nor more than 30 days
27 after the notice is served.

28 (3) Notwithstanding paragraphs (1) and (2), in any
29 case where the commissioner is basing a decision to
30 remove an insurer from the list, or deny an application to
31 be placed on the list, on the failure of the insurer or
32 applicant to comply with, meet or maintain any of the
33 objective criteria established by this section, or by
34 regulation adopted pursuant to this section, the
35 commissioner may so specify this fact in the order, and no
36 hearing shall be required to be held on the order.

37 (4) Notwithstanding paragraphs (1) and (2), the
38 commissioner may, without prior notice or hearing,
39 remove from the list established pursuant to subdivision
40 (f) any insurer that has failed or refused to timely provide

1 documents required by this section, or any regulations
2 adopted to implement this section. In the case of removal
3 pursuant to this paragraph, the commissioner shall notify
4 all surplus line brokers of the action.

5 (h) In addition to any other statements or reports
6 required by this chapter, the commissioner may also
7 address to any licensee a written request for full and
8 complete information respecting the financial stability,
9 reputation and integrity of any nonadmitted insurer with
10 whom the licensee has dealt or proposes to deal in the
11 transaction of insurance business. The licensee so
12 addressed shall promptly furnish in written or printed
13 form so much of the information requested as he or she
14 can produce together with a signed statement identifying
15 the same and giving reasons for omissions, if any. After
16 due examination of the information and accompanying
17 statement, the commissioner may, if he or she believes it
18 to be in the public interest, order the licensee in writing
19 to place no further insurance business on property
20 located or operations conducted within or on the lives of
21 persons who are residents of this state with the
22 nonadmitted insurer on behalf of any person. Any
23 placement in the nonadmitted insurer made by a licensee
24 after receipt of the order is a violation of this chapter. The
25 commissioner may issue an order when documents
26 submitted pursuant to subdivisions (c) and (d) do not
27 meet the criteria of subdivisions (a) to (e), inclusive, or
28 when the commissioner obtains documents on an insurer
29 and the insurer does not meet the criteria of subdivisions
30 (a) to (e), inclusive.

31 (i) The commissioner shall require, at least annually,
32 the submission of records and statements as are
33 reasonably necessary to ensure that the requirements of
34 this section are maintained.

35 (j) The commissioner shall establish by regulation a
36 schedule of fees to cover costs of administering and
37 enforcing this chapter.

38 (k) (1) Insurance may be placed on a limited basis
39 with insurers not on the list established pursuant to this
40 section if all of the following conditions are met:

1 (A) The use of multiple insurers is necessary to obtain
2 coverage for 100 percent of the risk.

3 (B) At least 80 percent of the risk is placed with
4 admitted insurers or insurers that appear on the list of
5 eligible nonadmitted insurers.

6 (C) The placing surplus line broker submits to the
7 commissioner, or his or her designee, copies of all
8 documentation relied upon by the surplus line broker to
9 make the broker's determination that the financial
10 stability, reputation, and integrity of the unlisted insurer
11 or insurers, are adequate to safeguard the interest of the
12 insured under the policy. This documentation, and any
13 other documentation regarding the unlisted insurer
14 requested by the commissioner, shall be submitted no
15 more than 30 days after the insurance is placed with the
16 unlisted insurer for the initial placement by that broker
17 with the particular unlisted insurer, and annually
18 thereafter for as long as the broker continues to make
19 placements with the unlisted insurer pursuant to this
20 paragraph.

21 (D) The insured has aggregate annual premiums for
22 all risks other than workers' compensation or health
23 coverage totaling no less than one hundred thousand
24 dollars (\$100,000).

25 (2) Insurance may not be placed pursuant to
26 paragraph (1) if any of the following applies:

27 (A) The unlisted insurer has for any reason been
28 objected to by the commissioner pursuant to this section,
29 removed from the list, or denied placement on the list.

30 (B) The insurance includes coverage for
31 employer-sponsored medical, surgical, hospital, or other
32 health or medical expense benefits payable to the
33 employee by the insurer.

34 (C) The insurance is mandatory under the laws of the
35 federal government, this state, or any political subdivision
36 thereof, and includes any portion of limits of coverage
37 mandated by those laws.

38 (D) The insured is a multiple employer welfare
39 arrangement, as defined in Section 1002(40)(A) of Title
40 29 of the United States Code, or any other arrangement

1 among two or more employers that are not under
2 common ownership or control, which is established or
3 maintained for the primary purpose of providing
4 insurance benefits to the employees of two or more
5 employers.

6 (E) Unlisted insurers represent a disproportionate
7 portion of the lower layers of the coverage.

8 (3) Nothing in this section is intended to alter any
9 duties of a surplus line broker pursuant to subdivision (b)
10 of Section 1765 or other laws of this state to safeguard the
11 interests of the insured under the policy in
12 recommending or placing insurance with a nonadmitted
13 insurer.

14 (4) Placements authorized by this subdivision are
15 intended to provide sophisticated insurance purchasers
16 with a means to obtain necessary commercial insurance
17 coverage from nonadmitted insurers not listed by the
18 commissioner in situations where it is not commercially
19 possible to fully obtain that coverage from either
20 admitted or listed insurers. This subdivision shall not be
21 deemed to permit surplus line brokers to place with
22 nonadmitted insurers common commercial or personal
23 line coverages for insureds that can be placed with
24 insurers that are admitted or listed pursuant to this
25 section, whether the insured is an individual insured, or
26 a group created primarily for the purpose of purchasing
27 insurance.

28 (I) As used in this section:

29 (1) “Certified” means an originally signed or sealed
30 statement, dated not more than 60 days before
31 submission, made by a public official or other person,
32 attached to a copy of a document, that attests that the
33 copy is a true copy of the original, and that the original is
34 in the custody of the person making the statement.

35 (2) “Domiciliary jurisdiction” means the state, nation,
36 or subdivision thereof under the laws of which an insurer
37 is incorporated or otherwise organized.

38 (3) “Domiciliary state of the syndicate’s trust” means
39 the state in which the syndicate’s trust fund is principally

1 maintained and administered for the benefit of the
2 syndicate's policyholders in the United States.

3 (4) "IID" means the International Insurers
4 Department.

5 (5) "Insurer" means (unless the context indicates
6 otherwise) "nonadmitted" insurers that are either
7 "foreign" or "alien" insurers, as those terms are defined
8 in Sections 25, 27, and 1580, and syndicates whose
9 members consist of individual incorporated insurers who
10 are not engaged in any business other than underwriting
11 as a member of the group and individual unincorporated
12 insurers, provided all the members are subject to the
13 same level of solvency regulation and control by the
14 group's domiciliary regulator. The term "insurer"
15 includes all nonadmitted insurers selling insurance to or
16 through purchasing groups as defined in the Liability Risk
17 Retention Act of 1986 (15 U.S.C. Sec. 3901 et seq.) and the
18 California Risk Retention Act of 1990 (Chapter 1.5
19 (commencing with Section 125) of Part 1 of Division 1),
20 except insurers that are risk retention groups as defined
21 by those acts.

22 (6) "ISI" means Insurance Solvency International.

23 (7) "Licensee" means surplus line brokers licensed
24 pursuant to Sections 1765, 1765.2, 1765.3, and 1765.4.

25 (8) "NAIC" means the National Association of
26 Insurance Commissioners or its successor organization.

27 (9) "NAIIO" means the Nonadmitted Alien Insurer
28 Information Office of the NAIC or its successor office.

29 (10) "State" means any state of the United States; the
30 District of Columbia; a commonwealth, or a territory.

31 (11) "Verified" means a document or copy
32 accompanied by an originally signed statement, dated not
33 more than 60 days before submission, from a responsible
34 executive or official who has authority to provide the
35 statement and knowledge whereof he or she speaks,
36 attesting either under oath before a notary public, or
37 under penalty of perjury under California law, that the
38 assertions made in the document are true.

39 (m) With respect to a nonadmitted insurer that is
40 listed as an authorized surplus line insurer as of

1 December 31, 1994, pursuant to Sections 2174.1 to 2174.14,
2 inclusive, of Title 10 of the California Code of Regulations,
3 this section shall not be effective until the subsequent
4 expiration of the listing of that insurer. Nothing in the bill
5 that amended this section during the 1994 portion of the
6 1993–94 Regular Session is intended to repeal or imply
7 there is not authority to adopt, or to have adopted, or to
8 continue in force, any regulation, or part thereof, with
9 respect to surplus line insurance which is not clearly
10 inconsistent with it.

11 *SEC. 4. Section 1765.1 of the Insurance Code is*
12 *amended to read:*

13 1765.1. No surplus line broker shall place any
14 coverage with a nonadmitted insurer unless the insurer
15 is domiciled in the Republic of Mexico and the placement
16 covers only liability arising out of the ownership,
17 maintenance, or use of a motor vehicle, aircraft, or boat
18 in the Republic of Mexico, or, at the time of placement,
19 the nonadmitted insurer:

20 (a) (1) Has established its financial stability,
21 reputation, and integrity, for the class of insurance the
22 broker proposes to place, by satisfactory evidence
23 submitted to the commissioner through a surplus line
24 broker.

25 (2) (A) Has capital and surplus that together total at
26 least fifteen million dollars (\$15,000,000). “Capital” shall
27 be as defined in Section 36. “Surplus” shall be defined as
28 assets exceeding the sum of liabilities for losses reported,
29 expenses, taxes, and all other indebtedness and
30 reinsurance of outstanding risks as provided by law and
31 paid-in capital in the case of an insurer issuing or having
32 outstanding shares of capital stock. The type of assets to
33 be used in calculating capital and surplus shall be as
34 follows: at least fifteen million dollars (\$15,000,000) shall
35 be in the form of cash, or securities of the same character
36 and quality as specified in Sections 1170 to 1182, inclusive,
37 or in readily marketable securities listed on regulated
38 United States’ national or principal regional securities
39 exchanges. The remaining assets shall be in the form just
40 described, or in the form of investments of substantially

1 the same character and quality as described in Sections
2 1190 to 1202, inclusive. In calculating capital and surplus
3 under this section, the term “same character and quality”
4 shall permit, but not require, the commissioner to
5 approve assets maintained in accordance with the laws of
6 another state or country. The commissioner shall be
7 guided by any limitations, restrictions, or other
8 requirements of this code or the National Association of
9 Insurance Commissioners’ Accounting Practices and
10 Procedures Manual in determining whether assets
11 substantially similar to those described in Sections 1190 to
12 1202, inclusive, qualify. The commissioner shall retain the
13 discretion to disapprove or disallow any asset that is not
14 of a sound quality, or that he or she deems to create an
15 unacceptable risk of loss to the insurer or to policyholders.
16 Securities specifically valued by the National Association
17 of Insurance Commissioners Securities Valuation Office
18 shall be presumed readily marketable absent evidence to
19 the contrary. Letters of credit will not qualify as assets in
20 the calculation of surplus. If less than fifteen million
21 dollars (\$15,000,000), the commissioner has affirmatively
22 found that the capital and surplus is adequate to protect
23 California policyholders. The commissioner shall
24 consider, on determining whether to make this finding,
25 factors such as quality of management, the capital and
26 surplus of any parent company, the underwriting profit
27 and investment income trends, and the record of claims
28 payment and claims handling practices of the
29 nonadmitted insurer, or

30 (B) In the case of an “Insurance Exchange” created
31 and authorized under the laws of individual states,
32 maintains capital and surplus of not less than fifty million
33 dollars (\$50,000,000) in the aggregate. “Capital” shall be
34 as defined in Section 36. “Surplus” shall be defined as
35 assets exceeding the sum of liabilities for losses reported,
36 expenses, taxes, and all other indebtedness and
37 reinsurance of outstanding risks as provided by law and
38 paid-in capital in the case of an insurer issuing or having
39 outstanding shares of capital stock. The type of assets to
40 be used in calculating capital and surplus shall be as

1 follows: at least fifteen million dollars (\$15,000,000) shall
2 be in the form of cash, or securities of the same character
3 and quality as specified in Sections 1170 to 1182, inclusive,
4 or in readily marketable securities listed on regulated
5 United States' national or principal regional securities
6 exchanges. The remaining assets shall be in the form just
7 described, or in the form of investments of substantially
8 the same character and quality as described in Sections
9 1190 to 1202, inclusive. In calculating capital and surplus
10 under this section, the term "same character and quality"
11 shall permit, but not require, the commissioner to
12 approve assets maintained in accordance with the laws of
13 another state or country. The commissioner shall be
14 guided by any limitations, restrictions, or other
15 requirements of this code or the National Association of
16 Insurance Commissioners' Accounting Practices and
17 Procedures Manual in determining whether assets
18 substantially similar to those described in Sections 1190 to
19 1202, inclusive, qualify. The commissioner shall retain the
20 discretion to disapprove or disallow any asset that is not
21 of a sound quality, or that he or she deems to create an
22 unacceptable risk of loss to the insurer or to policyholders.
23 Securities specifically valued by the National Association
24 of Insurance Commissioners Securities Valuation Office
25 shall be presumed readily marketable absent evidence to
26 the contrary. Letters of credit will not qualify as assets in
27 the calculation of surplus. In the case of an Insurance
28 Exchange which maintains funds for the protection of all
29 Insurance Exchange policyholders, each individual
30 syndicate seeking to accept surplus line placements of
31 risks resident, located or to be performed in this state shall
32 maintain minimum capital and surplus of not less than six
33 million four hundred thousand dollars (\$6,400,000). Each
34 individual syndicate shall increase the capital and surplus
35 required by this paragraph by one million dollars
36 (\$1,000,000) each year until it attains a capital and surplus
37 of fifteen million dollars (\$15,000,000). In the case of
38 Insurance Exchanges ~~which~~ *that* do not maintain funds
39 for the protection of all Insurance Exchange
40 policyholders, each individual syndicate seeking to

1 accept surplus line placement of risks resident, located or
2 to be performed in this state shall meet the capital and
3 surplus requirements of subparagraph (A) of this
4 paragraph.

5 (C) In the case of a syndicate that is part of a group
6 consisting of incorporated individual insurers, or a
7 combination of both incorporated and unincorporated
8 insurers, that at all times maintains a trust fund of not less
9 than one hundred million dollars (\$100,000,000) in a
10 qualified United States financial institution as security to
11 the full amount thereof for the United States surplus line
12 policyholders and beneficiaries of direct policies of the
13 group, including all policyholders and beneficiaries of
14 direct policies of the syndicate, and the full balance in the
15 trust fund is available to satisfy the liabilities of each
16 member of the group of those syndicates, incorporated
17 individual insurers or other unincorporated insurers,
18 without regard to their individual contributions to that
19 trust fund, and the trust complies with the terms of and
20 conditions specified in paragraph (1) of subdivision (b),
21 the syndicate is excepted from the capital and surplus
22 requirements of subparagraph (A) of paragraph (2). The
23 incorporated members of the group shall not be engaged
24 in any business other than underwriting as a member of
25 the group and shall be subject to the same level of
26 solvency regulation and control by the group's
27 domiciliary regulator as are the unincorporated
28 members.

29 (b) (1) In addition, to be eligible as a surplus line
30 insurer, an insurer not domiciled in one of the United
31 States or its territories shall have in force in the United
32 States an irrevocable trust account in a qualified United
33 States financial institution, for the protection of United
34 States policyholders, of not less than five million four
35 hundred thousand dollars (\$5,400,000) and consisting of
36 cash, securities acceptable to the commissioner which are
37 authorized pursuant to Sections 1170 to 1182, inclusive,
38 readily marketable securities acceptable to the
39 commissioner ~~which~~ *that* are listed on a regulated United
40 States national or principal regional security exchange, or

1 clean and irrevocable letters of credit acceptable to the
2 commissioner and issued by a qualified United States
3 financial institution. The trust agreement shall be in a
4 form acceptable to the commissioner. The funds in the
5 trust account may be included in any calculation of
6 capital and surplus, except letters of credit, which shall
7 not be included in any calculation.

8 (2) In the case of a syndicate seeking eligibility under
9 subparagraph (C) of paragraph (2) of subdivision (a), the
10 syndicate shall, in addition to the requirements of that
11 subparagraph, at a minimum, maintain in the United
12 States a trust account in an amount satisfactory to the
13 commissioner that is not less than the amount required by
14 the domiciliary state of the syndicate's trust. The trust
15 account shall comply with the terms and conditions
16 specified in paragraph (1) of subdivision (b).

17 (3) In the case of a group of incorporated insurers
18 under common administration that maintains a trust fund
19 of not less than one hundred million dollars
20 (\$100,000,000) in a qualified United States financial
21 institution for the payment of claims of its United States
22 policyholders, their assigns, or successors in interest and
23 that complies with the terms and conditions of paragraph
24 (1) that has continuously transacted an insurance
25 business outside the United States for at least three years,
26 that is in good standing with its domiciliary regulator,
27 whose individual insurer members maintain standards
28 and financial condition reasonably comparable to
29 admitted insurers, that submits to this state's authority to
30 examine its books and bears the expense of examination,
31 and that has an aggregate policyholder surplus of ten
32 billion dollars (\$10,000,000,000), the group is excepted
33 from the capital and surplus requirements of subdivision
34 (a).

35 (c) Has caused to be provided to the commissioner the
36 following documents:

37 (1) The financial documents as specified below, each
38 showing the insurer's condition as of a date not more than
39 12 months prior to submission:

1 (A) A copy of an annual statement, prepared in the
2 form prescribed by the NAIC. For an alien insurer, in lieu
3 of an annual statement, a licensee may submit a form as
4 set forth by regulation and as prepared by the insurer,
5 and, if listed by the IID, a copy of the complete
6 information as required in the application for listing by
7 the IID.

8 (B) A copy of an audited financial report on the
9 insurer's condition that meets the standards of ~~paragraph~~
10 *subparagraph* (D) for foreign insurers or ~~paragraph~~
11 *subparagraph* (E) for alien insurers.

12 (C) If the insurer is an alien:

13 (i) A certified copy of the trust agreement referenced
14 in subdivision (b).

15 (ii) A verified copy of the most recent quarterly
16 statement or list of the assets in the trust.

17 (D) Financial reports filed pursuant to this section by
18 foreign insurers shall conform to the following standards:

19 (i) Financial documents shall be certified.

20 (ii) An audited financial report shall constitute a
21 supplement to the insurer's annual statement, as required
22 by the annual statement instructions issued by the NAIC.

23 (iii) An audited financial report shall be prepared by
24 an independent certified public accountant or
25 accounting firm in good standing with the American
26 Institute of Certified Public Accountants and in all states
27 where licensed to practice; and be prepared in
28 conformity with statutory accounting practices
29 prescribed, or otherwise permitted, by the insurance
30 regulator of the insurer's domiciliary jurisdiction.

31 (iv) An audited financial report shall include
32 information on the insurer's financial position as of the
33 end of the most recent calendar year, and the results of
34 its operations, cash-flows, and changes in capital and
35 surplus for the year then ended.

36 (v) An audited financial report shall be prepared in a
37 form and using language and groupings substantially the
38 same as the relevant sections of the insurer's annual
39 statement filed with its domiciliary jurisdiction, and
40 presenting comparatively the amounts as of December 31

1 of the most recent calendar year and the amounts as of
2 December 31 of the preceding year.

3 (E) Financial reports filed pursuant to this section by
4 alien insurers shall conform to the following standards:

5 (i) Except as provided in clause (ii) of subparagraph
6 (C), financial documents should be certified, if
7 certification of a financial document is not available, the
8 document shall be verified.

9 (ii) Financial documents should be expressed in
10 United States dollars, but may be expressed in another
11 currency, if the exchange rate for the other currency as
12 of the date of the document is also provided.

13 (iii) The responses provided pursuant to
14 subparagraph (A) of paragraph (1) on the form
15 submitted in lieu of an annual statement should follow the
16 most recent ISI Guide to Alien Reporting Format,
17 “Standard Definitions of Accounting Items.” Responses
18 that do not agree with a standard definition shall be fully
19 explained in the form.

20 (iv) An audited financial report shall be prepared by
21 an independent *licensed* auditor ~~licensed as such~~ in the
22 insurer’s domiciliary jurisdiction or in any state.

23 (v) An audited financial report shall be prepared in
24 accord with either (I) Generally Accepted Auditing
25 Standards that prescribe Generally Accepted Accounting
26 Principles, or (II) International Accounting Standards as
27 published and revised from time to time by the
28 International Auditing Guidelines published by the
29 International Auditing Practice Committee of the
30 International Federation of Accountants; and shall
31 include financial statement notes and a summary of
32 significant accounting practices.

33 (F) The commissioner may accept, in lieu of a
34 document described above, any certified or verified
35 financial or regulatory document, statement, or report if
36 the commissioner finds that it possesses reliability and
37 financial detail substantially equal to or greater than the
38 document for which it is proposed to be a substitute.

39 (G) If one of the financial documents required to be
40 submitted under subparagraphs (A) and (B) is dated

1 within 12 months of submission, but the other document
2 is not so dated, the licensee may use the outdated
3 document if it is accompanied by a supplement. The
4 supplement must meet the same requirements which
5 apply to the supplemented document, and must update
6 the outdated document to a date within the prescribed
7 time period, preferably to the same date as the
8 nonsupplemented document.

9 (2) A certified copy of the insurer's license issued by
10 its domiciliary jurisdiction, plus a certification of good
11 standing, certificate of compliance, or other equivalent
12 certificate, from either that jurisdiction or, if the
13 jurisdiction ~~issues no such~~ *does not issue those* certificates,
14 from any state where it is licensed.

15 (3) Information on the insurer's agent in California for
16 service of process, including the agent's full name and
17 address. The agent's address must include a street address
18 where the agent can be reached during normal business
19 hours.

20 (4) The complete street address, mailing address, and
21 telephone number of the insurer's principal place of
22 business.

23 (5) A certified or verified explanation, report, or other
24 statement, from the insurance regulatory office or official
25 of the insurer's domiciliary jurisdiction, concerning the
26 insurer's record regarding market conduct and consumer
27 complaints; or, if ~~such~~ *that* information cannot be
28 obtained from that jurisdiction, then ~~such~~ *any* other
29 information ~~as~~ *that* the licensee can procure to
30 demonstrate a good reputation for payment of claims and
31 treatment of policyholders.

32 (6) A verified statement, from the insurer or licensee,
33 on whether the insurer or any affiliated entity is currently
34 known to be the subject of any order or proceeding
35 regarding conservation, liquidation, or other
36 receivership; or regarding revocation or suspension of a
37 license to transact insurance in any jurisdiction; or
38 otherwise seeking to stop the insurer from transacting
39 insurance in any jurisdiction. The statement shall identify
40 ~~any such~~ *the* proceeding by date, jurisdiction, and relief



1 or sanction sought; and shall attach a copy of ~~any such~~ *the*
2 *relevant* order.

3 (7) A certified copy of the most recent report of
4 examination or an explanation if the report is not
5 available.

6 (d) (1) Has provided any additional information or
7 documentation required by the commissioner ~~which~~ *that*
8 is relevant to the financial stability, reputation, and
9 integrity of the nonadmitted insurer. In making a
10 determination concerning financial stability, reputation,
11 and integrity of the nonadmitted insurer, the
12 commissioner shall consider any analysis, findings, or
13 conclusion made by the National Association of Insurance
14 Commissioners (NAIC) in its review of the insurer for
15 purposes of inclusion on or exclusion from the list of
16 authorized nonadmitted insurers maintained by the
17 NAIC. The commissioner may, but shall not be required
18 to, rely on, adopt, or otherwise accept any analyses,
19 findings, or conclusions of the NAIC, as the commissioner
20 deems appropriate. In the case of a syndicate seeking
21 eligibility under subparagraph (C) of paragraph (2) of
22 subdivision (a), the commissioner may, but shall not be
23 required to, rely on, adopt, or otherwise accept any
24 analyses, findings, or conclusions of any state, as the
25 commissioner deems appropriate, as long as that state, in
26 its method of regulation and review, meets the
27 requirements of paragraph (2).

28 (2) The regulatory body of the state shall regularly
29 receive and review the following: (A) an audited
30 financial statement of the syndicate, prepared by a
31 certified or chartered public accountant; (B) an opinion
32 of a qualified actuary with regard to the syndicate's
33 aggregate reserves for payment of losses or claims and
34 payment of expenses of adjustment or settlement of losses
35 or claims; (C) a certification from the qualified United
36 States financial institution that acts as the syndicate's
37 trustee, respecting the existence and value of the
38 syndicate's trust fund; and (D) information concerning
39 the syndicate's or its manager's operating history,
40 business plan, ownership and control, experience and

1 ability, together with any other pertinent factors, and any
2 information indicating that the syndicate or its manager
3 make reasonably prompt payment of claims in this state
4 or elsewhere. The regulatory body of the state shall have
5 the authority, either by law or through the operation of
6 a valid and enforceable agreement, to review the
7 syndicate's assets and liabilities and audit the syndicate's
8 trust account, and shall exercise that authority with a
9 frequency and in a manner satisfactory to the
10 commissioner.

11 (e) Has established that:

12 (1) All documents required by subdivisions (c) and
13 (d) have been filed. Each of the documents appear after
14 review to be complete, clear, comprehensible,
15 unambiguous, accurate, and consistent.

16 (2) The documents affirm that the insurer is not
17 subject in any jurisdiction to an order or proceeding that:

18 (A) Seeks to stop it from transacting insurance.

19 (B) Relates to conservation, liquidation, or other
20 receivership.

21 (C) Relates to revocation or suspension of its license.

22 (3) The documents affirm that the insurer has actively
23 transacted insurance for the three years immediately
24 preceding the filing made under this section, unless an
25 exemption is granted. As used in this paragraph, "insurer"
26 does not include a syndicate of underwriting entities. The
27 commissioner may grant an exemption if the licensee has
28 applied for exemption and demonstrates either of the
29 following:

30 (A) The insurer meets the condition for any exception
31 set forth in subdivision (a), (b), or (c) of Section 716.

32 (B) If the insurer has been actively transacting
33 insurance for at least 12 months, and the licensee
34 demonstrates that the exemption is warranted because
35 the insurer's current financial strength, operating history,
36 business plan, ownership and control, management
37 experience, and ability, together with any other
38 pertinent factors, make three years of active insurance
39 transaction unnecessary to establish sufficient reputation.



1 (4) The documents confirm that the insurer holds a
2 license to issue insurance policies (other than
3 reinsurance) to residents of the jurisdiction that granted
4 the license unless an exemption is granted. The
5 commissioner may grant an exemption if the licensee has
6 applied for an exemption and demonstrates that the
7 exemption is warranted because the insurer proposes to
8 issue in California only commercial coverage, and is
9 wholly owned and actually controlled by substantial and
10 knowledgeable business enterprises that are its
11 policyholders and that effectively govern the insurer's
12 destiny in furtherance of their own business objectives.

13 (5) The information filed pursuant to paragraph (5) of
14 subdivision (c) or otherwise filed with or available to the
15 commissioner, including reports received from
16 California policyholders, shall indicate that the insurer
17 makes reasonably prompt payment of claims in this state
18 or elsewhere.

19 (6) The information available to the commissioner
20 shall not indicate that the insurer offers in California a
21 licensee products or rates that violate any provision of this
22 code.

23 (f) Has been placed on the list of eligible surplus line
24 insurers by the commissioner. The commissioner shall
25 establish a list of all surplus line insurers that have met the
26 requirements of subdivisions (a) to (e), inclusive, and
27 shall publish a master list at least semiannually. Any
28 insurer receiving approval as an eligible surplus line
29 insurer shall be added by addendum to the list at the time
30 of approval, and shall be incorporated into the master list
31 at the next date of publication. If an insurer appears on
32 the most recent list, it shall be presumed that the insurer
33 is an eligible surplus line insurer, unless the commissioner
34 or his or her designee has mailed or causes to be mailed
35 notice to all surplus line brokers ~~and special lines' surplus~~
36 ~~line-brokers~~ that the commissioner has withdrawn the
37 insurer's eligibility. Upon receipt of notice, the surplus
38 line broker ~~or special lines' surplus line broker~~ shall make
39 no further placements with the insurer. Nothing in this

1 subdivision shall limit the commissioner's discretion to
2 withdraw an insurer's eligibility.

3 (g) (1) Except as provided by paragraph (2),
4 whenever the commissioner has reasonable cause to
5 believe, and determines after a public hearing, that any
6 insurer on the list established pursuant to subdivision (f),
7 (A) is in an unsound financial condition, (B) does not
8 meet the eligibility requirements under subdivisions (a)
9 to (e), inclusive, (C) has violated the laws of this state, or
10 (D) without justification, or with a frequency so as to
11 indicate a general business practice, delays the payment
12 of just claims, the commissioner may issue an order
13 removing the insurer from the list. Notice of hearing shall
14 be served upon the insurer or its agent for service of
15 process stating the time and place of the hearing and the
16 conduct, condition, or ground upon which the
17 commissioner would make his or her order. The hearing
18 shall occur not less than 20 days, nor more than 30 days
19 after notice is served upon the insurer or its agent for
20 service of process.

21 (2) If the commissioner determines that an insurer's
22 immediate removal from the list is necessary to protect
23 the public or an insured or prospective insured of the
24 insurer, or, in the case of an application by an insurer to
25 be placed on the list which is being denied by the
26 commissioner, the commissioner may issue an order
27 pursuant to paragraph (1) without prior notice and
28 hearing. At the time an order is served pursuant to this
29 paragraph to an insurer on the list, the commissioner shall
30 also issue and serve upon the insurer a statement of the
31 reasons that immediate removal is necessary. Any order
32 issued pursuant to this paragraph shall include a notice
33 stating the time and place of a hearing on the order,
34 which shall be not less than 20 days, nor more than 30 days
35 after the notice is served.

36 (3) Notwithstanding paragraphs (1) and (2), in any
37 case where the commissioner is basing a decision to
38 remove an insurer from the list, or deny an application to
39 be placed on the list, on the failure of the insurer or
40 applicant to comply with, meet or maintain any of the

1 objective criteria established by this section, or by
2 regulation adopted pursuant to this section, the
3 commissioner may so specify this fact in the order, and no
4 hearing shall be required to be held on the order.

5 (4) Notwithstanding paragraphs (1) and (2), the
6 commissioner may, without prior notice or hearing,
7 remove from the list established pursuant to subdivision
8 (f) any insurer~~which~~ *that* has failed or refused to timely
9 provide documents required by this section, or any
10 regulations adopted to implement this section. In the case
11 of removal pursuant to this paragraph, the commissioner
12 shall notify all surplus line brokers ~~and special lines²~~
13 ~~surplus line brokers~~ of the action.

14 (h) In addition to any other statements or reports
15 required by this chapter, the commissioner may also
16 address to any licensee a written request for full and
17 complete information respecting the financial stability,
18 reputation and integrity of any nonadmitted insurer with
19 whom ~~such~~ *the* licensee has dealt or proposes to deal in
20 the transaction of insurance business. The licensee so
21 addressed shall promptly furnish in written or printed
22 form so much of the information requested as he or she
23 can produce together with a signed statement identifying
24 the same and giving reasons for omissions, if any. After
25 due examination of the information and accompanying
26 statement, the commissioner may, if he or she believes it
27 to be in the public interest, order the licensee in writing
28 to place no further insurance business on property
29 located or operations conducted within or on the lives of
30 persons who are residents of this state with the
31 nonadmitted insurer on behalf of any person. Any
32 placement in the nonadmitted insurer made by a licensee
33 after receipt of ~~such~~ *that* order is a violation of this
34 chapter. The commissioner may issue an order when
35 documents submitted pursuant to subdivisions (c) and
36 (d) do not meet the criteria of subdivisions (a) to (e),
37 inclusive, or when the commissioner obtains documents
38 on an insurer and the insurer does not meet the criteria
39 of subdivisions (a) to (e), inclusive.

1 (i) The commissioner shall require, at least annually,
2 the submission of records and statements as are
3 reasonably necessary to ensure that the requirements of
4 this section are maintained.

5 (j) The commissioner shall establish by regulation a
6 schedule of fees to cover costs of administering and
7 enforcing this chapter.

8 (k) (1) Insurance may be placed on a limited basis
9 with insurers not on the list established pursuant to this
10 section if all of the following conditions are met:

11 (A) The use of multiple insurers is necessary to obtain
12 coverage for 100 percent of the risk.

13 (B) At least 80 percent of the risk is placed with
14 admitted insurers or insurers that appear on the list of
15 eligible nonadmitted insurers.

16 (C) The placing surplus line broker submits to the
17 commissioner, or his or her designee, copies of all
18 documentation relied upon by the surplus line broker to
19 make the broker's determination that the financial
20 stability, reputation, and integrity of the unlisted insurer
21 or insurers, are adequate to safeguard the interest of the
22 insured under the policy. This documentation, and any
23 other documentation regarding the unlisted insurer
24 requested by the commissioner, shall be submitted no
25 more than 30 days after the insurance is placed with the
26 unlisted insurer for the initial placement by that broker
27 with the particular unlisted insurer, and annually
28 thereafter for as long as the broker continues to make
29 placements with the unlisted insurer pursuant to this
30 paragraph.

31 (D) The insured has aggregate annual premiums for
32 all risks other than workers' compensation or health
33 coverage totaling no less than one hundred thousand
34 dollars (\$100,000).

35 (2) Insurance may not be placed pursuant to
36 paragraph (1) if any of the following applies:

37 (A) The unlisted insurer has for any reason been
38 objected to by the commissioner pursuant to ~~Section~~
39 ~~4765.1~~ *this section*, removed from the list, or denied
40 placement on the list.

1 (B) The insurance includes coverage for
2 employer-sponsored medical, surgical, hospital, or other
3 health or medical expense benefits payable to the
4 employee by the insurer.

5 (C) The insurance is mandatory under the laws of the
6 federal government, this state, or any political subdivision
7 thereof, and includes any portion of limits of coverage
8 mandated by those laws.

9 (D) The insured is a multiple employer welfare
10 arrangement, as defined in Section 1002(40)(A) of Title
11 29 of the United States Code, or any other arrangement
12 among two or more employers that are not under
13 common ownership or control, which is established or
14 maintained for the primary purpose of providing
15 insurance benefits to the employees of two or more
16 employers.

17 (E) Unlisted insurers represent a disproportionate
18 portion of the lower layers of the coverage.

19 (3) Nothing in this section is intended to alter any
20 duties of a surplus line broker pursuant to subdivision (b)
21 of Section 1765 or other laws of this state to safeguard the
22 interests of the insured under the policy in
23 recommending or placing insurance with a nonadmitted
24 insurer.

25 (4) Placements authorized by this subdivision are
26 intended to provide sophisticated insurance purchasers
27 with a means to obtain necessary commercial insurance
28 coverage from nonadmitted insurers not listed by the
29 commissioner in situations where it is not commercially
30 possible to fully obtain that coverage from either
31 admitted or listed insurers. This subdivision shall not be
32 deemed to permit surplus line brokers to place with
33 nonadmitted insurers common commercial or personal
34 line coverages for insureds that can be placed with
35 insurers that are admitted or listed pursuant to this
36 section, whether the insured is an individual insured, or
37 a group created primarily for the purpose of purchasing
38 insurance.

39 (I) As used in this section:

(1) “Certified” means an originally signed or sealed statement, dated not more than 60 days before submission, made by a public official or other person, attached to a copy of a document, that attests that the copy is a true copy of the original, and that the original is in the custody of the person making the statement.

(2) “Domiciliary jurisdiction” means the state, nation, or subdivision thereof under the laws of which an insurer is incorporated or otherwise organized.

(3) “Domiciliary state of the syndicate’s trust” means the state in which the syndicate’s trust fund is principally maintained and administered for the benefit of the syndicate’s policyholders in the United States.

(4) “IID” means the International Insurers Department.

(5) “Insurer” means (unless the context indicates otherwise) “nonadmitted” insurers that are either “foreign” or “alien” insurers, as those terms are defined in Sections 25, 27, and 1580, and syndicates whose members consist of individual incorporated insurers who are not engaged in any business other than underwriting as a member of the group and individual unincorporated insurers, provided all the members are subject to the same level of solvency regulation and control by the group’s domiciliary regulator. The term “insurer” includes all nonadmitted insurers selling insurance to or through purchasing groups as defined in the Liability Risk Retention Act of 1986 (15 U.S.C. Sec. 3901 et seq.) and the California Risk Retention Act of 1990 (Chapter 1.5 commencing with Section 125) of Part 1 of Division 1), except insurers that are risk retention groups as defined by those acts.

(6) “ISI” means Insurance Solvency International.

~~(7) “Licensee” includes both surplus line brokers and special lines² means a surplus line brokers licensed pursuant to subdivision (b) of Section 1760.5 and Sections 1765, 1765.2, 1765.3, and 1765.4 broker as defined in Section 47.~~

(8) “NAIC” means the National Association of Insurance Commissioners or its successor organization.

(9) “NAHIO” means the Nonadmitted Alien Insurer Information Office of the NAIC or its successor office.

(10) “State” means any state of the United States; the District of Columbia; a commonwealth, or a territory.

(11) “Verified” means a document or copy accompanied by an originally signed statement, dated not more than 60 days before submission, from a responsible executive or official who has authority to provide the statement and knowledge whereof he or she speaks, attesting either under oath before a notary public, or under penalty of perjury under California law, that the assertions made in the document are true.

(m) With respect to a nonadmitted insurer that is listed as an authorized surplus line insurer as of December 31, 1994, pursuant to Sections 2174.1 to 2174.14, inclusive, of Title 10 of the California Code of Regulations, this section shall not be effective until the subsequent expiration of the listing of that insurer. Nothing in the bill that amended this section during the 1994 portion of the 1993–94 Regular Session is intended to repeal or imply there is not authority to adopt, or to have adopted, or to continue in force, any regulation, or part thereof, with respect to surplus line insurance which is not clearly inconsistent with it.

SEC. 5. Section 4 of this bill incorporates amendments to Section 1765.1 of the Insurance Code proposed by both this bill and AB 1975. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 1765.1 of the Insurance Code, and (3) this bill is enacted after AB 1975, in which case Section 3 of this bill shall not become operative.